

# EXHIBIT A

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Docket No. 01-12257-PBS

COPY

CITIZENS FOR CONSUMER JUSTICE, ET AL.

Plaintiffs

v.

ABBOTT LABORATORIES, et al

Defendants

.....

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE MARIANNE B. BOWLER  
UNITED STATES MAGISTRATE JUDGE  
HELD ON NOVEMBER 9, 2005

APPEARANCES:

For the plaintiffs: Sean Matt, Esquire, Hagens, Berman, Sobol,  
Shapiro, LLP, 1301 Fifth Avenue, Seattle WA 98101

John Macoretta, Esquire, Spector, Roseman & Kodroff, P.C., 1818  
Market Street, Ste. 2500, Philadelphia, PA 19103.

David S. Nalven, Esquire, Hagens, Berman, Sobol, Shapiro, LLP,  
One Main Street, Cambridge, MA 02142.

For Shering-Plough: John Montgomery, Esquire

For Pfizer and Pharmacia: Scott Stempel, Esquire

For Johnson & Johnson: Andrew Schau, Esquire, Adeel Mangi,  
Esquire, Patterson, Belknap, Webb & Tyler, LLP, 1133 Avenue of  
the Americas, New York, NY 10036-6710.

For Non-parties and Absent Class Members, Blue Cross Blue Shield  
of Vermont, et al: Thomas J. Poulin, Robins, Kaplan, Miller &  
Ceresi, LLP, 1801 K Street, N.W., Ste. 1200, Washington, DC  
20006

Court Reporter:

Proceedings recorded by digital sound recording, transcript  
produced by transcription service.

MARYANN V. YOUNG  
Certified Court Transcriber  
Wrentham, Massachusetts 02093  
(508) 384-2003

1 you have the data.

2 MR. MACORETTA: Are we using - I don't know if Your  
3 Honor ordered us to use the definition Mr. Schau gave or are we  
4 just agree to that or I'm not--

5 THE COURT: Can you agree to it?

6 MR. MACORETTA: I believe that we can, yes--

7 THE COURT: All right.

8 MR. MACORETTA: --Your Honor. The request to admit  
9 number four is the same thing, admissions to pharmacy benefit  
10 managers. That should be resolved by what you just said. We -  
11 with the request to admit number five is admitting about  
12 Remicade, rebates that may have been paid to help maintenance  
13 organizations and preferred provider organizations. Subject to  
14 that definition then I believe we can answer that as well.

15 Request to admit number six. This is where things  
16 change and it becomes more complicated. Admit that from '98 to  
17 the present, that's when Remicade came on the market, the  
18 rebates that Centocor has paid on Remicade have reduced the net  
19 reimbursement cost of Remicade for those payers that have  
20 received rebates. Well, net reimbursement costs is defined -  
21 that's not a term the plaintiffs ever use by the way, is  
22 defined by them to mean that the cost incurred by a payer such  
23 as a patient, insurer or the government for a drug or biologic  
24 product net of any rebates or other reimbursement or other  
25 rebates or other price adjustments? That is not a term the

1 plaintiffs ever use. We have not attempted to figure it out  
2 to date.

3 THE COURT: It's pretty straightforward.

4 MR. MACORETTA: Well, but, Your Honor, to do that we  
5 would then need data from the entire class. The net  
6 reimbursement cost incurred by a payer such as an insurer or a  
7 patient meaning what did that patient or payer ultimately pay?  
8 We don't have that data from the entire class. I mean, that's  
9 - you're going to hear other motions today about discovery from  
10 third party Blue's. That's just simply that it's not available  
11 to us.

12 THE COURT: Well to the extent that you have the  
13 data, what's your--

14 MR. SCHAU: May I just say on this issue I don't  
15 think they need to crunch a single number to answer this  
16 question. All we're trying to get at here is the fact that the  
17 people who are paying for our drugs are the ones getting the  
18 rebates so that it reduces their costs of having to reimburse  
19 for our drugs. We're not asking them to run any mathematical  
20 number crunching calculations. All they have to do is  
21 understand that, you know,  $X - Y$  is a lower number than  $X$   
22 plus  $Y$ .

23 MR. MACORETTA: If that's the limitation then we can  
24 probably do that but when we read this interrogatory it seemed  
25 to indicate that we had to come up with some nationwide net

1 reimbursement cost.

2 THE COURT: Let's take it with - you've heard it,  
3 take it at that.

4 MR. MACORETTA: That's fine.

5 THE COURT: Next.

6 MR. MACORETTA: Admit that from 1998 to the present  
7 the rebates that Centocor has paid on Remicade have reduced the  
8 spread. Spread as defined by J&J is different than the way  
9 plaintiffs have always defined the spread. Spread here means  
10 the difference between the net acquisition cost, which is  
11 another term created by J&J and the net reimbursement cost.  
12 Net acquisition cost is apparently what doctors ultimately pay  
13 to acquire the drug. We don't know what that is. It's  
14 completely irrelevant to our claims. Every J&J witness we have  
15 asked, do you know what doctors pay to acquire your drug, the  
16 answer is no. We know what we sell it to the wholesalers for.  
17 We have no idea what the wholesalers mark-up is. To answer  
18 this we would need to know the information that J&J  
19 disclaims any knowledge of.

20 THE COURT: What's your response?

21 MR. SCHAU: I think again, this does not require them  
22 to crunch any numbers, but I will tell you that if they will  
23 say under oath that they have no idea what physicians pay for  
24 Remicade and that that lack of information has no implications  
25 for their case, I think that enhances my prospects for summary

1 judgment--

2 MR. MACORETTA: Well--

3 MR. SCHAU: --very significantly.

4 THE COURT: Is that a--

5 MR. MACORETTA: I don't know if we can make that  
6 representation. I mean, we still have expert reports. I can  
7 tell you right now that that's not part of our theory, but I  
8 don't think we can make a representation under oath that that  
9 has no relevance to anything. You know, and our answer under  
10 oath is we've conducted discovery on this from their witnesses  
11 all of whom said they don't know. So as we read this they're  
12 asking us to come up with a formula using data that they admit  
13 they don't have. To do this we would have to depose  
14 wholesalers who have resisted that and the time for that  
15 discovery is over as well.

16 THE COURT: Well, if you don't have the information  
17 I'm not going to order further discovery on it. Okay?

18 MR. MACORETTA: Request to admit number eight is  
19 going to go to the same issue because that says admit that from  
20 '98 to the present the spread on Remicade has not exceeded the  
21 difference between its public WAC and its published AWP. Well,  
22 the information that - we still have the information to figure  
23 out spread as they used in that, which is same as the last  
24 question.

25 MR. SCHAU: Your Honor, there's no dispute that they

1 have all of the information on Remicade from the beginning of  
2 time until the end of 2003. If they want to say we can't admit  
3 in 2004 because we never got that information in discovery and  
4 never moved to compel it, I accept that.

5 THE COURT: Okay.

6 MR. SCHAU: But to say that they don't have the  
7 information and, therefore, they can't make these calculations  
8 is just simply untrue. And I think the predicate of your last  
9 ruling was that you accepted that representation, and I just  
10 wanted to make it clear that--

11 THE COURT: That's clear.

12 MR. SCHAU: --we dispute that.

13 MR. MACORETTA: We don't dispute that we have  
14 information from J&J. Our position is the information this  
15 seeks is not information from J&J. It's information from  
16 someone else that we don't have.

17 THE COURT: Well, set that out in your response then.

18 MR. MACORETTA: All right. The - interrogatory, now  
19 we have some interrogatories that say from '98 to the present  
20 state each published WAC and each published AWP for Remicade,  
21 Remicade and the effective date of change in each of Remicade's  
22 WAC and AWP. Well, again, Your Honor, this is - there the ones  
23 who set the AWP and the WAC, so this is an interrogatory that  
24 says you tell us when we changed all of our prices. At best  
25 this would be set out, this would be better set out in the form

# **EXHIBIT B**

**FILED UNDER SEAL**



# **EXHIBIT C**

**FILED UNDER SEAL**

# EXHIBIT D

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE CIRCUIT COURT OF KANAWHA COUNTY  
WEST VIRGINIA

Civil Action No. 01-C-3011

-----

STATE OF WEST VIRGINIA,  
DARRELL V. MCGRAW, JR.,  
ATTORNEY GENERAL,

Plaintiff,

vs. DEPOSITION OF:  
LOUIS MANFREDI

WARRICK PHARMACEUTICAL  
CORPORATION, SCHERING-PLOUGH  
CORPORATION, DEY, INC.,  
ABBOTT LABORATORIES and  
ABBOTT LABORATORIES, INC.,

Defendants.

-----

TRANSCRIPT of the stenographic notes of  
the proceedings in the above-entitled matter, as  
taken by and before EILEEN HIMMER, a Certified  
Shorthand Reporter and Notary Public of the State  
of New Jersey, held at the HILTON SHORT HILLS  
HOTEL, 401 JFK Parkway, Short Hills, New Jersey,  
on July 11, 2005, commencing at 10:11 in the  
forenoon.

HUDSON REPORTING & VIDEO, INC.  
124 WEST 30TH STREET  
NEW YORK, NEW YORK 10001

Page 82

1 Manfredi - direct  
 2 A. I think LB may be an abbreviation for  
 3 Labetalol.  
 4 Q. Does that help you in any way what Tie  
 5 in Code might mean?  
 6 A. No.  
 7 Q. Do you know if there was a list of all  
 8 of these codes and their descriptions when you  
 9 were at work?  
 10 A. I don't know. Tie in Codes may have  
 11 been on the pricing form. There may have been a  
 12 box on the pricing form to check.  
 13 Q. We are done with this document.  
 14 We discussed this a bit earlier, but  
 15 it's your recollection that the wholesaler class  
 16 of trade was designated as 912. Is that correct?  
 17 MR. McDONALD: I object to the form.  
 18 A. I believe so from the one document that  
 19 you asked me to look at, because a chain began  
 20 with a 913 and the account that began with the 912  
 21 I recognized as a wholesaler, which led me to that  
 22 conclusion.  
 23 Q. You also saw on that document, which  
 24 was Weintraub Exhibit 10, there was a generic  
 25 distributor on there that was 915, is that

Page 84

1 Manfredi - direct  
 2 A. No.  
 3 Q. Have you seen any document while you  
 4 were at Warrick that listed the average price for  
 5 Albuterol products as it is listed here?  
 6 MR. McDONALD: I object to the form.  
 7 A. No.  
 8 Q. So you never saw a reference to an  
 9 average price while you were at Warrick?  
 10 MR. McDONALD: I object to the form.  
 11 A. The -- I can only go back to trying to  
 12 prepare a recommendation for an RFP. As I was  
 13 developing pricing recommendations, I had to put  
 14 down a price. I don't know what that column head  
 15 was. It could said average, but it was a  
 16 reference -- it's more of a reference price than  
 17 an average price in the context of preparing a  
 18 response for an RFP.  
 19 Q. Where would you have gotten that  
 20 reference price from?  
 21 MR. McDONALD: I object to the form.  
 22 A. That pricing would have come from these  
 23 exhibits that we just referred to, number 13 and  
 24 number 10.  
 25 Q. Those have a lot of numbers on them, a

Page 83

1 Manfredi - direct  
 2 correct?  
 3 A. That's right.  
 4 Q. I think that was Rugby Laboratories, is  
 5 that right, on the last page?  
 6 A. Yes.  
 7 Q. Do you know what a Systems Price File  
 8 is?  
 9 MR. McDONALD: I object to the form.  
 10 A. I believe the Systems Price File may be  
 11 referring to the documents, the exhibits that we  
 12 just looked at.  
 13 Q. That was Weintraub Exhibit 10 and 13,  
 14 is that correct?  
 15 A. 13? Yes.  
 16 Q. I am going to hand you what was  
 17 previously marked as Weintraub Exhibit 19, Bates  
 18 numbered WWV 0057511 through 57522. If you could  
 19 take a minute to look at that document and let me  
 20 know when you are done?  
 21 A. Okay.  
 22 Q. Have you seen this document before?  
 23 A. Never.  
 24 Q. Have you seen any document in this  
 25 format before?

Page 85

1 Manfredi - direct  
 2 lot of prices on them. How would you determine  
 3 the reference price from those numbers?  
 4 MR. McDONALD: I object to the form.  
 5 A. By SKU, which is Exhibit 13, I would  
 6 look at the pricing for the main -- for the large  
 7 customers, the large -- if it's a wholesaler RFP,  
 8 we would look at the wholesaler prices, the most  
 9 current price that is reflected in this document.  
 10 That price, or those range of prices for those top  
 11 wholesaler accounts would be a reference for that  
 12 price for that SKU.  
 13 Q. The range meaning you would take the  
 14 range and get an average, or the median, or --  
 15 A. I don't recall if I put a range down,  
 16 or -- oftentimes the large accounts had very  
 17 similar prices. So there may have been one price  
 18 that was put in there.  
 19 Q. Would you have done the same for  
 20 chains?  
 21 A. Yes.  
 22 Q. Can you tell from this document? It  
 23 just lists customer number 1 through customer 78.  
 24 A. No.  
 25 Q. Can you tell which of these customers

22 (Pages 82 to 85)

Page 86

1 Manfredi - direct  
 2 were wholesalers or distributors?  
 3 A. I would have no idea.  
 4 Q. I am done with that.  
 5 Do you know who would have been  
 6 responsible at Warrick for determining the initial  
 7 AWP's for Albuterol solution?  
 8 MR. McDONALD: I object to the form.  
 9 A. I believe at the time of products that  
 10 were launched while I was at Warrick, I believe  
 11 Harvey Weintraub made those determinations of AWP.  
 12 Q. Do you know if the AWP for any of the  
 13 Albuterol solutions was ever increased while you  
 14 were at Warrick?  
 15 A. I don't know.  
 16 Q. I am going to hand you what was  
 17 previously marked Exhibit 22 for Weintraub's  
 18 deposition. It's Bates numbered WWV 001210.  
 19 MS. SOLEN: I don't have an extra, why  
 20 don't you look at this one.  
 21 Q. Have you finished looking at it?  
 22 A. Yes.  
 23 Q. Have you ever seen this document  
 24 before?  
 25 A. Not that I recall.

Page 87

1 Manfredi - direct  
 2 Q. Do you know if you were at Warrick on  
 3 the date of this letter, February 23, 1995?  
 4 A. I don't think so. I think I was there  
 5 in March.  
 6 Q. This document is a letter from  
 7 Mr. Weintraub to Ms. Beth Rader from Price Alert,  
 8 is that correct?  
 9 A. She must be an employee of Price Alert  
 10 or First Data Bank, Ms. Rader.  
 11 Q. Isn't it true this document says that  
 12 the price of Warrick Albuterol solution .5 percent  
 13 20 milliliter will increase to 13.95?  
 14 MR. McDONALD: Objection to the form.  
 15 The document would speak for itself.  
 16 Donna, I really wish you would be  
 17 respectful to this witness. He's taken time off  
 18 from his job, this document came out a year before  
 19 he was at Warrick.  
 20 MS. SOLEN: He stated he started at  
 21 Warrick in March of 1995.  
 22 MR. McDONALD: We can clear that up,  
 23 and you know from his last deposition, you told  
 24 him on the record a while ago that he previously  
 25 testified it was in March of 1996. Regardless,

Page 88

1 Manfredi - direct  
 2 though, it's dated before he was there, he already  
 3 stated he has never seen it before. I wish you  
 4 would be more respectful for this man's time.  
 5 He's not in any way being compensated for the time  
 6 he's taken away from his job today.  
 7 A. Can I answer?  
 8 Q. Yes.  
 9 A. The document says there will be a price  
 10 increase on Albuterol solution .5 percent 20 ML  
 11 that would be effective on February 24 at 5:00.  
 12 Q. Do you have any recollection of this  
 13 price increase?  
 14 A. No.  
 15 Q. I am handing you what has been marked  
 16 previously as Exhibit 23 from Mr. Weintraub's  
 17 deposition. It's Bates numbered WWV 0011184. Let  
 18 me know when you are done with that.  
 19 A. I'm finished.  
 20 Q. Have you ever seen this document  
 21 before?  
 22 A. No.  
 23 Q. This document also states that the AWP  
 24 was increased as of September 21, 1995 to 14.99.  
 25 Does this document refresh your recollection that

Page 89

1 Manfredi - direct  
 2 the AWP was increased at any time?  
 3 A. No, it doesn't.  
 4 Q. Thank you. I am done with that.  
 5 Do you know if the AWP for any of the  
 6 Albuterol products was ever decreased?  
 7 A. I don't believe so.  
 8 Q. Have you heard of the term "Marketing  
 9 the Spread"?  
 10 A. Have I heard of the term?  
 11 Q. Yes.  
 12 A. Yes.  
 13 Q. Can you tell me what your understanding  
 14 of that term is?  
 15 A. My understanding of the term marketing  
 16 the spread is the spread is the difference between  
 17 AWP and what the acquisition cost is for that  
 18 product. So that difference between AWP and  
 19 acquisition cost is very commonly called the  
 20 spread.  
 21 Q. Whose acquisition cost are you  
 22 referring to?  
 23 MR. McDONALD: I object to the form.  
 24 A. I believe the term would go back to the  
 25 retail pharmacy, who is seeking reimbursement.

23 (Pages 86 to 89)

Page 90

1 Manfredi - direct  
 2 Q. Do you know how that spread would be  
 3 used?  
 4 MR. McDONALD: I object to the form.  
 5 A. Well, there are, again -- my basic  
 6 knowledge is that there are formulas for  
 7 reimbursement. AWP less a certain percentage. So  
 8 if AWP less 30 percent is what an item gets  
 9 reimbursed at, theoretically, and that is \$10, and  
 10 an AWP for the product is set at \$50, and the  
 11 acquisition cost is \$20, and the difference there  
 12 is \$30. The difference between the \$10 and that  
 13 30 dollars is what the retailer comes out ahead of  
 14 the game with, if you will.  
 15 Q. Do you know if -- are you aware if any  
 16 manufacturers use that spread to market for their  
 17 products?  
 18 MR. McDONALD: I object to the form.  
 19 A. I am not aware of that.  
 20 Q. In your experience in marketing generic  
 21 pharmaceuticals and branded pharmaceuticals, do  
 22 you ever use the spread to market pharmaceuticals?  
 23 A. No. You use the direct price.  
 24 Q. I hand you --  
 25 MS. SOLEN: I would like this marked.

Page 91

1 Manfredi - direct  
 2 (Manfredi-2, New Product Proposal,  
 3 Bates numbers WWV 0021914, is marked for  
 4 identification.)  
 5 Q. Go ahead and take a look at Manfredi  
 6 Exhibit 2 that was just handed to you and let me  
 7 know when you are done. It's Bates numbered WWV  
 8 0021914.  
 9 A. Okay.  
 10 Q. Have you seen this document before?  
 11 A. I don't know if I have seen this  
 12 document, but I have seen documents just like  
 13 this.  
 14 Q. Is there a term for this document?  
 15 A. Well, I think it says, "They are on it,  
 16 New Product Proposal."  
 17 Q. Do you know Bill Roth at Cardinal?  
 18 A. No. But as you mention the name, it  
 19 seems somehow familiar.  
 20 Q. It says he's from Cardinal Managed  
 21 Source. Do you know what "Managed Source" means?  
 22 A. Cardinal is a wholesaler, and they had  
 23 different flavors of business. They had -- I  
 24 forget what are their substitution program --  
 25 there were four different names, four different

Page 92

1 Manfredi - direct  
 2 prices that went to Cardinal for their programs.  
 3 Q. As you see there is a column for AWP  
 4 listed in this document?  
 5 A. Yes.  
 6 Q. Do you know why that would be listed?  
 7 MR. McDONALD: I object to the form.  
 8 A. I don't know why it would be listed.  
 9 The 1, 2, 3 -- all those four columns could be  
 10 obtained from any Price Alert or Red Book.  
 11 Q. Did you ever create a new product  
 12 proposal, a draft one?  
 13 A. This? No.  
 14 Q. It wasn't in your job description?  
 15 A. No.  
 16 Q. But you do routinely see them, is that  
 17 correct?  
 18 A. This document would have been the  
 19 communication back to the customer after a request  
 20 for a price change had come in. So I would have  
 21 seen this upstream from this process.  
 22 Q. What policy did you have in a  
 23 customer's request for a price change?  
 24 A. Ensuring that the system that was in  
 25 place for tracking a price change was adhered to.

Page 93

1 Manfredi - direct  
 2 That is, there is a form for every product that  
 3 has a price change, and there are signatory  
 4 sign-offs that have to be signed-off in order for  
 5 that to be an approved price change, and the  
 6 ultimate signature, the last signature who was the  
 7 president of the company.  
 8 Q. What other signatures were required on  
 9 the price change?  
 10 A. It was myself, either and or Harvey, I  
 11 don't know whether we both needed it, or whether  
 12 it was one or the other, and I believe the trade  
 13 director, who was the submitter of the -- the  
 14 trade director first, then Harvey or myself, then  
 15 I believe finance, and then Ray.  
 16 Q. Whose role was it to determine whether  
 17 or not Warrick would make a price change.  
 18 A. Ultimately Ray.  
 19 Q. So would everyone below Ray make the  
 20 recommendation on whether or not to make the price  
 21 change?  
 22 A. Yes.  
 23 Q. The direct prices listed on the  
 24 right-hand column, does that include any rebates  
 25 that would be offered to Cardinal?

24 (Pages 90 to 93)

Page 94

1 Manfredi - direct  
 2 MR. McDONALD: Objection to the form.  
 3 A. I honestly don't recall if it's the net  
 4 one or the price before the rebates.  
 5 Q. I am done with that.  
 6 MS. SOLEN: I am going to mark this as  
 7 Manfredi-3.  
 8 (Manfredi-3, A document entitled, "Now  
 9 Available, Albuterol Sulfate USP Inhaler Solution,  
 10 Bates numbers WWV 0013502, is marked for  
 11 identification.)  
 12 Q. The court reporter has just handed you  
 13 a document marked as Manfredi Exhibit 3. It seems  
 14 this document may have predated your work. Just  
 15 let me know if this refresh your recollection that  
 16 you have seen this document while at Warrick?  
 17 A. Yes. This is very closely analogous to  
 18 the exhibit we looked at, Exhibit 2.  
 19 Q. Can you tell me what the generic source  
 20 program is?  
 21 A. I believe the generic -- this is  
 22 Bergen/Brunswick -- I have to go by the date on  
 23 the memo, which is 2/15/95. A generic source  
 24 program predated the types of programs that I was  
 25 familiar with, which are called wholesaler auto

Page 95

1 Manfredi - direct  
 2 substitution programs.  
 3 So I believe this was the program that  
 4 was in place where you would submit a completed  
 5 RFP to get on this program to be an exclusive  
 6 supplier of a particular SKU.  
 7 Q. So this the predecessor program to the  
 8 wholesaler auto substitution program?  
 9 MR. McDONALD: I object to the form.  
 10 A. I have to back into that response based  
 11 upon the dates and the title of the program,  
 12 because I know somewhere in the middle of '96 is  
 13 when every wholesaler had an auto substitution  
 14 program. I can only conclude that yes, this was a  
 15 predecessor.  
 16 Q. But there wasn't a generic source  
 17 program in place when you were at Warrick?  
 18 A. It had a different title.  
 19 Q. That title was wholesaler auto  
 20 substitution program?  
 21 MR. McDONALD: Objection to the form.  
 22 A. Yes. There may have even been a  
 23 particular name that Bergen had for its program,  
 24 and McKesson may have had a different name for  
 25 their program.

Page 96

1 Manfredi - direct  
 2 Q. For their auto substitution program?  
 3 A. Yes.  
 4 Q. I am done with that document.  
 5 MS. SOLEN: Let me mark this document  
 6 as Manfredi-4.  
 7 (Manfredi-4, A letter dated October 27,  
 8 1997, Bates numbers WPX 01908-01913, is marked for  
 9 identification.)  
 10 MR. McDONALD: As with the document we  
 11 looked at previously, this document apparently was  
 12 not produced to you in conjunction with this  
 13 lawsuit that you obtained it from some other  
 14 party. I believe it came from the Texas case.  
 15 We designate this, until I can figure  
 16 out what it is, highly confidential under the West  
 17 Virginia protective order, and again its use under  
 18 the Texas protective are order, but you already  
 19 said you would.  
 20 Q. Mr. Manfredi if you can review Manfredi  
 21 Exhibit 4, WPX 01908 through 01913, and let me  
 22 know when you are done.  
 23 A. Okay.  
 24 Q. Can you tell me if you have seen this  
 25 document before?

Page 97

1 Manfredi - direct  
 2 A. I don't know if I have seen this  
 3 document before. I am familiar with the concept  
 4 of what is contained in the document.  
 5 Q. If you will see on the second page the  
 6 bottom it says, "cc to R. Inserra and  
 7 L. Manfredi."  
 8 A. Yes.  
 9 Q. Do you have any reason why you wouldn't  
 10 have been cc'd on this?  
 11 A. No, I don't.  
 12 Q. Can you tell me whose handwriting is on  
 13 the first page?  
 14 A. Up at the top.  
 15 Q. Yes.  
 16 A. That says R. Inserra.  
 17 Q. Yes.  
 18 A. I believe that looks like Harvey  
 19 Weintraub's handwriting.  
 20 Q. You said you are familiar with the  
 21 concept of this document. Can you explain to me  
 22 what that is?  
 23 A. Yeah. There was -- it was a new way to  
 24 partner with customers that included products that  
 25 were currently in the line, currently available

25 (Pages 94 to 97)



Page 98

1 Manfredi - direct  
 2 for sale in the Warrick line, and a futures  
 3 products that you would say looking at other  
 4 products that were anticipated to become part of  
 5 the line.  
 6 So there would be an additional rebate  
 7 that a customer who signed this agreement could be  
 8 eligible for if they signed up for this plus some  
 9 of the future products.  
 10 Q. Can you tell me why you would be copied  
 11 on a document like this?  
 12 A. For my information.  
 13 Q. Who is R. Inserra?  
 14 A. That is Bob Inserra. He was the  
 15 manager of finance for Warrick with for a period  
 16 of time when I was at Warrick.  
 17 Q. If you could turn to the third page,  
 18 which is 01910. It has a chart that says "CVS  
 19 Proposal" on top?  
 20 A. Yes.  
 21 Q. This chart lists many columns, one of  
 22 which is the AWP?  
 23 A. Yes.  
 24 Q. Do you know why this number would be  
 25 relevant on this list?

Page 99

1 Manfredi - direct  
 2 MR. McDONALD: I object to the form.  
 3 A. Do I know why AWP would be relevant?  
 4 Q. To CVS, correct?  
 5 MR. McDONALD: Mark objection.  
 6 A. No, I -- the first five columns are  
 7 pretty much standard fair and were, I think, even  
 8 part of a product catalogue that we had for  
 9 Warrick. I just think they just stayed so you had  
 10 a full description of what the item was.  
 11 Q. Then it says two columns over from the  
 12 AWP, "Net Invoice Price"?  
 13 A. Yes.  
 14 Q. Do you know where these numbers come  
 15 from?  
 16 MR. McDONALD: I object to the form.  
 17 A. I don't know whether this was part of  
 18 an RFP proposal, or whether this initiative about  
 19 having this total line rebate would have been off  
 20 cycle from the normal RFP process.  
 21 I would say that net invoice price  
 22 column would have been arrived at -- if it is not  
 23 an RFP, it would have been arrived at via a  
 24 process that was analogous to the RFP.  
 25 Q. Do you know if the AWP listed here was

Page 100

1 Manfredi - direct  
 2 relevant to CVS in their offer to them?  
 3 MR. McDONALD: I object to the form.  
 4 A. I don't know.  
 5 Q. I will hand one more document.  
 6 Manfredi-5.  
 7 (Manfredi-5, A letter dated November  
 8 21, 1996, with attachment, Bates numbers WPX  
 9 00007-8, is marked for identification.)  
 10 Q. Mr. Manfredi, the court reporter has  
 11 just handed you what has been marked as Manfredi  
 12 Exhibit 5.  
 13 A. Yes.  
 14 Q. Have you had a moment to look at that  
 15 document?  
 16 A. I am looking at it right now. Okay.  
 17 Q. Have you seen this document before?  
 18 A. Yes.  
 19 Q. Do you recall seeing it, or do you  
 20 assume you have seen it?  
 21 A. I assume I have seen it because it has  
 22 my name on it.  
 23 Q. Is that your signature at the top?  
 24 A. Yes.  
 25 Q. Does this appear to be an accurate copy

Page 101

1 Manfredi - direct  
 2 of a letter you would have sent to Mr. LaPilia --  
 3 MR. McDONALD: I object to the form.  
 4 Q. -- on October 21, 1996?  
 5 MR. McDONALD: Objection.  
 6 A. Without question, I created the cover  
 7 letter. When I am looking at this document I have  
 8 a concern, because the cover document indicates a  
 9 bid proposal for the Care Group, and when I look  
 10 at the attachment, while Care Group is up at the  
 11 head of it, on the bottom left it says "Premier  
 12 Bid." I am a little confused by what that means,  
 13 because the Premier Group is a different group.  
 14 Q. Can you tell me what the Premier Group  
 15 is?  
 16 A. It's one of the other distributor  
 17 groups that was managed by Bi-Coastal and Larry  
 18 LaPilia, who was the recipient of this  
 19 communication.  
 20 Q. Could that just have been --  
 21 A. It could be an error. It should  
 22 perhaps say Care instead of Premier at the bottom.  
 23 Q. In that bid proposal, again, there are  
 24 several columns, one listing the AWP.  
 25 Can you tell me again how the AWP would

26 (Pages 98 to 101)



Page 102

1 Manfredi - cross  
 2 be relevant for the Care Group?  
 3 MR. McDONALD: I object to the form.  
 4 A. The relevance of AWP we discussed as  
 5 the same discussion that we had earlier about what  
 6 AWP is or may be would apply to this. My  
 7 explanation wouldn't change.  
 8 MS. SOLEN: I am going to take five  
 9 minutes and see if I have any further questions.  
 10 MR. McDONALD: Before you go off the  
 11 record, I want to note that Exhibit 5 was not  
 12 produced in this case. It may have been produced  
 13 to you in another form, but we will designate this  
 14 as confidential pursuant to the West Virginia  
 15 protective order.  
 16 MS. SOLEN: Let me take five minutes to  
 17 see if I have any other questions.  
 18 THE VIDEOGRAPHER: The time now is 1:08  
 19 p.m. We are going off the record.  
 20 (A recess is taken.)  
 21 THE VIDEOGRAPHER: The time now is 1:17  
 22 p.m. We are back on the record.  
 23 MS. SOLEN: I have no further questions  
 24 at this time. I will pass the witness.  
 25 CROSS-EXAMINATION BY MR. McDONALD:

Page 103

1 Manfredi - cross  
 2 Q. I have just a few questions for you. I  
 3 will try to be very brief.  
 4 Let me show you a document I believe is  
 5 your resume that you produced in conjunction with  
 6 your last deposition. Do you recognize that  
 7 document?  
 8 A. Yes, I do.  
 9 Q. Is that a document that you prepared?  
 10 A. Yes.  
 11 Q. To clear up when you worked at Warrick,  
 12 can you look at that document and does that pre-  
 13 fresh your recollection as to the years you worked  
 14 at Warrick?  
 15 A. Yes, of course. In 1998 - 1996 to  
 16 1998.  
 17 Q. While you were at Warrick, did you ever  
 18 speak with any Warrick customer that was located  
 19 in the State of West Virginia?  
 20 A. No.  
 21 Q. While you were at Warrick, did you ever  
 22 speak with any person who represented the State of  
 23 West Virginia, or one of its agencies?  
 24 A. No.  
 25 Q. While you were at Warrick, did you ever

Page 104

1 Manfredi - cross  
 2 discuss reimbursement with any Warrick customer?  
 3 A. No.  
 4 Q. While you were at Warrick, did you ever  
 5 discuss with any Warrick customer the difference  
 6 between AWP and any reimbursement that customer  
 7 may receive?  
 8 A. No.  
 9 Q. Previously you discussed the term  
 10 "Marketing the Spread" with Ms. Solen. Do you  
 11 recall that?  
 12 A. Yes.  
 13 Q. While you were at work did you ever  
 14 market the spread to any Warrick customer?  
 15 A. No.  
 16 MR. McDONALD: That's all the questions  
 17 I have.  
 18 MS. SOLEN: I have one more question.  
 19 REDIRECT EXAMINATION BY MS. SOLEN:  
 20 Q. On your resume does it state the months  
 21 you began and ended at Warrick?  
 22 A. It doesn't.  
 23 Q. Earlier you testified you believe you  
 24 began work at Warrick in March of 1995. Does that  
 25 refresh -- do you know if you started in March of

Page 105

1 Manfredi - redirect  
 2 1996?  
 3 A. I would believe it would be March of  
 4 1996. I have pay stubs that I could verify the  
 5 first pay paycheck. That would be the best.  
 6 MS. SOLEN: I have no further  
 7 questions.  
 8 MR. McDONALD: Thank you.  
 9 MS. SOLEN: Anyone on the phone.  
 10 MR. MITCHELL: This is Ryan Mitchell.  
 11 I couldn't hear what his position was when he was  
 12 at work, the title of it.  
 13 THE WITNESS: Management of new  
 14 business development.  
 15 MR. MITCHELL: That's all. That's all  
 16 I got.  
 17 THE VIDEOGRAPHER: Before we go off the  
 18 line with the telephone counsel, could you please  
 19 stay on the line for a second after I stop the  
 20 videotape?  
 21 This concludes the videotape deposition  
 22 of Lou Manfredi, it concludes tape 2 of 2 tapes  
 23 the time is 1:25. We are going off the record.  
 24 (The deposition concluded at 1:25 p.m.)  
 25

27 (Pages 102 to 105)

# EXHIBIT E

Brian Longstreet

August 30, 2005

Kenilworth, NJ

1

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

MDL NO. 1456

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**ORIGINAL**

x-----x

IN RE: PHARMACEUTICAL INDUSTRY: DEPOSITION OF:

AVERAGE WHOLESALE PRICE :

LITIGATION : BRIAN

\_\_\_\_\_ : LONGSTREET

THIS DOCUMENT RELATES TO :

ALL CLASS ACTIONS :

x-----x

Henderson Legal Services  
(202) 220-4158

Brian Longstreet

August 30, 2005

Kenilworth, NJ

83

1 Debbie and they were the experts in that area.

2 MR. McNEELY: If you would, please  
3 mark this document as Exhibit Longstreet 018 and it  
4 is Bates range numbered SPF00017106 through  
5 SPF00017116.

6 And again, Mr. Longstreet, if you would,  
7 take a moment to review Exhibit Longstreet 018 and  
8 please identify and describe what that document  
9 represents.

10 A. Yes, sir.

11 (Documents bearing Bates numbers  
12 SPF00017106 through SPF00017116 are received and  
13 marked as Exhibit Longstreet 018 for identification.)

14 THE WITNESS: The document is an  
15 e-mail from Chuck McDonald who was in our trade  
16 sales group -- actually, no I take that back.

17 It was from Mike Walsh, who was in our  
18 trade sales group, to his colleagues who were  
19 trade sales directors. I was copied on the e-mail  
20 basically indicating that Roche had launched  
21 Pegasys. It provides all of the information,  
22 normal and customary in terms of the press release

Brian Longstreet

August 30, 2005

Kenilworth, NJ

84

1 regarding the launch, the announcement to the  
2 wholesaler, a pricing comparison between the two  
3 products.

4 The unique thing is that at the time Roche  
5 also offered 15,000 patients free samples of  
6 Pegasys for three months when they launched the  
7 product.

8 Q. What is your understanding of the  
9 comment by Mike Walsh that the information,  
10 important information below should be used  
11 selectively where you think we have leverage.

12 What does that mean to you?

13 A. I think the issue was that Roche was  
14 providing a lot of free samples in the marketplace  
15 which was essential taking away business from  
16 wholesalers and specialty distributors. You'd  
17 have to ask Mike what he completely meant but what  
18 I believe he's inferring is that, use this  
19 information where you have good relationships and  
20 where you think it might be an impact because they  
21 were essentially taking money out of the wholesale  
22 and distribution system.

Brian Longstreet

August 30, 2005

Kenilworth, NJ

85

1 MR. McNEELY: Would you please mark  
2 that as Exhibit Longstreet 019 and that is, this  
3 document has a beginning Bates number of SPF00017151  
4 through SPF00017160.

5 (Documents bearing Bates numbers  
6 SPF00017151 through SPF00017160 are received and  
7 marked as Exhibit Longstreet 019 for identification.)

8 Q. And as before, when you have an  
9 opportunity to review it.

10 A. Yes, sir.

11 Q. And if you could identify it.

12 A. Document is an e-mail sent from myself to  
13 Olav Hellebo and Jim Robinson. Basically talks  
14 about the potential for retail trade program and  
15 talks about some market research that had been  
16 done in anticipation of the launch of a  
17 competitive product, Copegus to Rebetol. Talks  
18 also about the Orange Book and how products are  
19 rated. And then, lastly, tries to talk to the  
20 reimbursement process as it relates to Managed  
21 Care organizations and potentially pharmacies.

22 Q. Who is James Robinson?

Brian Longstreet

August 30, 2005

Kenilworth, NJ

86

1 A. He, at the time, was my direct supervisor  
2 within the Oncology Biotech Business Unit.

3 Q. Direct your attention to the second  
4 page under C. Could you read that paragraph, that  
5 one paragraph that's designated C?

6 MR. KAUFMAN: Out loud?

7 MR. MCNEELY: Out loud for the  
8 record, please.

9 A. The first paragraph or the second  
10 paragraph, sir?

11 Q. It would be the paragraph, first  
12 paragraph which is designated C which is the  
13 second paragraph on that page.

14 A. Sure.

15 "One other question that also was raised  
16 relates to the financial implications of Rebeto  
17 versus Copegus regarding pharmacies. As  
18 previously stated, there are few stakeholders in  
19 the process of drug distribution, wholesalers,  
20 pharmacies, doctors, patients, Managed Care/  
21 insurance companies. When it comes to pharmacies  
22 they are driven by Managed Care or insurance

Brian Longstreet

August 30, 2005

Kenilworth, NJ

87

1 reimbursement, profit motive and state law. A  
2 Managed Care organization can mandate  
3 reimbursement of a product versus another product.  
4 If a generic is available either the MCO, Managed  
5 Care Organization, or state can mandate generic  
6 substitution.

7 In addition, pharmacies are paid a  
8 dispensing fee plus the margin of whatever they  
9 purchase the product minus the reimbursement rate,  
10 usually AWP minus a percentage. With generics the  
11 acquisition cost is usually much lower than the  
12 published AWP and creates a favorable spread  
13 particularly when multiple generics exist. The  
14 acquisition price drops dramatically and the  
15 published AWP does not."

16 Q. Now, the word spread, in quotes,  
17 that was your choice of words. Is that correct?

18 A. Within this memo, yes.

19 Q. And as used in this memo, would you  
20 please define what spread is?

21 A. I think the -- it's the difference between  
22 what a pharmacy purchases the product at versus



Brian Longstreet

August 30, 2005

Kenilworth, NJ

88

1 what they're reimbursed at.

2 Q. And with regard, could you please  
3 read the next paragraph?

4 A. "Having a higher AWP and having  
5 reimbursement being paid on a percentage of AWP  
6 can be favorable to the pharmacies. For example,  
7 our recommended strategy of keeping the AWP and  
8 NDP higher if Roche comes in with a lower net  
9 direct price for Copegus actually could create a  
10 favorable situation because the reimbursement rate  
11 will be higher for our product.

12 Simple example, if the reimbursement rate  
13 is AWP minus 15 for a hundred dollar AWP product,  
14 the reimbursement is \$85 compared to \$70 AWP  
15 product where the reimbursement is 59.50. We just  
16 need to neutralize Managed Care and the state from  
17 influencing pharmacies by providing Managed Care  
18 and state Medicaid greater discounts."

19 Q. Now, there is an attachment to this  
20 memorandum which is entitled Peg-Intron War Games  
21 Top Line Report. Is that correct?

22 A. Correct.

Brian Longstreet

August 30, 2005

Kenilworth, NJ

89

1 Q. And what was the purchase of the  
2 War Games Top Line Report?

3 A. It was to talk to physicians in three  
4 geographic locations about their preference for  
5 our product versus a competitive product, Pegasys.  
6 And I think they also talked potentially about  
7 Ribarvirin, Rebetol versus Copegus.

8 MR. McNEELY: If you would please  
9 mark the next exhibit as Exhibit Longstreet 020.

10 (An e-mail dated 12-10-02 is received  
11 and marked as Exhibit Longstreet 020 for  
12 identification.)

13 Q. If you would, please, take a moment  
14 to review that document Exhibit Longstreet 020 and  
15 identify it and tell us what that represents.

16 A. It's an e-mail from Olav Hellebo to myself  
17 basically saying he sounds good, let me know if  
18 you'd like any involve -- my involvement in any of  
19 the discussions regarding that potential  
20 Ribarvirin or Rebetol retail pharmacy strategy.

21 Q. Can you tell me whether or not Mr.  
22 Hellebo was involved in any follow-up discussions

Brian Longstreet

Kenilworth, NJ

August 30, 2005

90

1 for further development of the retail pharmacy  
2 strategy?

3 A. Yes. As was a previous exhibit, both he  
4 and Mr. Zahn signed the approval memo.

5 MR. McNEELY: Mark this as Exhibit  
6 Longstreet 021.

7 (An e-mail dated 12-10-02 is received  
8 and marked as Exhibit Longstreet 021 for  
9 identification.)

10 Q. If you would, please, review  
11 Exhibit Longstreet 021 and if you would identify and  
12 explain what that document represents.

13 A. It's an e-mail from Bob Gallo who at the  
14 time was working for me. One of the things that  
15 we were looking at, and many different things, was  
16 a retail pharmacy model as it relates to  
17 Ribarvirin and we had run numerous scenarios.  
18 This particular e-mail describes some scenarios  
19 that was taking a look at reimbursement of Rebetol  
20 versus Copegus from a retail pharmacy perspective.

21 Q. And how was this information or  
22 this model used, represented by Exhibit Longstreet 021?